

REMARKS

Pursuant to the present amendment, claims 1-3, 5, 10-12 and 14 have been amended without adding any new subject-matter. By way of this amendment, claims 1-17 are pending in the instant application. Applicants respectfully request reconsideration of the application in view of the remarks set forth below.

In the Office Action, claims 1, 2, 5-9 10, 11, and 14-17 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable by Ament, U.S. Patent Publication No. 2004/0105436 (hereinafter **Ament**) and in further view of Bender, et al. U.S. Patent No. 6,366,779 (hereinafter **Bender**). Applicants respectfully traverse the Examiner's rejections.

More specifically, claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over **Ament**, in view of **Bender**. Applicants respectfully traverse the Office's §103 rejection of independent claim 1. Independent claim 1 is directed to a method of communication that, among other things, includes in response to a request for a service, transmitting at least one message comprising existing delay information corresponding with an estimated delay length associated with accessing the service through an open loop network. Applicants submit that, contrary to M.P.E.P. section 2143, the Examiner has failed to make out a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claimed features. Additionally, the references must provide a motivation to combine in the manner suggested by the Examiner. Mere conclusory statements to combine are insufficient.

Ament does not teach or suggest transmitting at least one message comprising existing delay information. Moreover, **Ament** is silent with regard to an estimated delay length associated with accessing the service. Contrary to **Ament**, independent claim 1 recites

transmitting at least one message comprising existing delay information corresponding with an estimated delay length.

As understood, *Ament* is directed to a data bus system that controls service engagements for bus users. A resource manager controls the service engagement on the basis of a priority information item. The resource manager sends a response to a requesting bus user, allowing the requesting bus user to use the service from the providing bus user via the data bus. However, the resource manager controls the service engagement on the basis of a priority information item that is transmitted to the resource manager in a message from the requesting bus user. See *Ament*, paragraph [0009], page 1. *Ament* uses the priority of the current request to determine whether to engage the service for the requesting bus user by the resource manager. That is, if the priority of the current request is higher than the priority of a prior user, the service's existing engagement is cancelled and the service can be engaged for the requesting bus user by the resource manager. If the priority of the current request is lower than or same as the priority of the prior bus user, the bus user's request is rejected by the resource manager or is entered into the list of already existing requests in order. See *Ament*, paragraph [0021], page 2.

In other words, in a data bus system described by *Ament*, waiting times for particular services on the data bus determines whether a resource request 9 by an application 8 for a requested service would be successful. See *Ament*, paragraph [0043], page 4. Accordingly, actual waiting times associated with service requests are used to determine whether to provide a service to a particular user of the data bus. The resource manager transmits an identifier for the service, and information regarding whether the request was successful, how long the waiting times are and/or the form in which the service can be used to the requesting application.

Ament uses the waiting time information for particular services along with a priority item for a current service request to provide a service to a bus user. In other words, the information about the priority of the current request and the waiting times for the already existing requests are used to determine whether to provide a service to a bus user in a bus system. Thus, *Ament* does not teach or suggest transmitting existing delay information, as noted above, moreover, *Ament* does not estimate delay length associated with accessing the service. As amended, claim 1 includes transmitting at least one message comprising existing delay information corresponding with an estimated delay length associated with accessing the service through an open loop network, in response to a request for a service. *Bender* is also silent with regard to this claimed feature of the present invention. That is, *Bender* does not disclose transmitting a message comprising existing delay information corresponding with an estimated delay length associated with the accessing the service.

Bender discloses rapid assignment of traffic channels to mobile stations in a wide area high-speed packet data cellular communication system. By rapidly assigning traffic channels to mobile stations in wireless communication system, *Bender* controls the transmission power of the requesting mobile stations. In this way, the delays associated with the assignment of traffic channels may be reduced and the user terminals may be supervised as quickly as possible. When a mobile station initiates a traffic channel assignment request, an access probe comprising the request is transmitted to a selected base station.

To reduce the time delays associated with the traffic channel request and assignment process, *Bender* assigns the mobile station a traffic channel in a very short time period the mobile station transmits a sequence of access probes of increasing power until the access attempt is either successful or terminates. See *Bender*, col. 8, lines 29-33. When the base station

receives the access probe, it transmits a traffic channel assignment message on the forward link traffic channel at the data rate defined in the DRC message previously transmitted by the mobile station. See *Bender*, col. 10, lines 17-21.

Bender allows the base stations to use the traffic channel, and not the control channel, for transmitting the traffic channel assignment message to the requesting mobile station. Since the traffic channel operates at a far higher rate than does the control channel, *Bender* provides a traffic channel assignment message at a much higher rate to the mobile station than was previously available. See *Bender*, col. 13, lines 26-35.

Contrary to *Bender*, independent claim 1 recites existing delay information corresponding with an estimated delay length associated with the accessing the service through an open loop network. Accordingly, *Bender* does not teach or suggest the claimed feature of claim 1. For at least this reason, the rejection of independent claim 1 and dependent claims 2-9, depending therefrom should be withdrawn and claims be allowed.

In the Office Action, the Examiner admits that *Ament* does not teach accessing a service through an open loop network. To teach this missing feature, the Examiner relies on *Bender*. However, *Bender* is equally silent with regard to this claimed feature of the present invention. Therefore, the Examiner's reliance on the combination of *Ament* and *Bender* is insufficient.

The Examiner alleges that "it would have been obvious to one skilled in the art at the time the invention was made to combine the art of *Ament* with the teaching of *Bender* of accessing a service through an open loop network to rapidly assign traffic channels." However, as already shown, neither *Ament* nor *Bender* teaches or suggests transmitting a message comprising existing delay information corresponding with an estimated delay length. Moreover, *Ament* and *Bender* are directed to different fields of use. *Ament* is intended to control a service

engagement in a data bus system and **Bender** is directed to rapid assignment of a traffic channel in digital cellular communication systems.

M.P.E.P., in section 2143 requires that teaching or suggestion to combine references must be found in the prior art, not in the Applicant's disclosure. The mere fact that reference can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. A statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teaching of the references.

It is well settled that a reference must provide some motivation or reason for one skilled in the art (working without the benefit of hindsight reconstruction using the Applicant's specification) to make the necessary changes in the disclosed device or method. The mere fact that a reference may be modified in the direction of the claimed invention does not make the modification obvious unless the reference expressly or impliedly teaches or suggests the desirability of the modification.

The Examiner has failed to show or cite where in **Ament** or **Bender** there exists a reasonable expectation of success if the referenced teachings are combined, as required by M.P.E.P. rules. In fact, the disclosures of the **Ament** and **Bender** references are considerably different. These references were not intended to be modified or combined, in a manner, as suggested by the Examiner. Moreover, if the proposed combination is obtained, it would still be unable to perform the claimed features of the present invention. Furthermore, if there is no motivation to combine found in the references itself, the references can not render claim 1 obvious in a *prima facie* manner. Therefore, for at least this reason, Applicants respectfully

request that the rejection of independent claim 1 and claims depending therefrom be withdrawn and claims be allowed.

For the aforementioned reasons independent claim 11 and claims depending therefrom 12-17 are believed to be in condition for allowance. Therefore, independent claim 11 and claims depending therefrom should be allowable.

In the Office Action, claims 3, 4, 12 and 13 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable by *Ament* and *Bender* in view of *Buford*, et al. U.S. Patent No. 5,945,948 (hereinafter *Buford*). Applicants respectfully traverse the Examiner's rejections.

The Examiner rejects the dependent claims 3, 4, 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over a combination of *Ament*, *Bender* and *Buford*. However, *Buford* fails to address the above-indicated shortcomings of *Ament* and *Bender*.

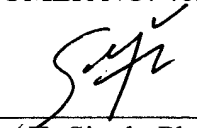
Arguments with respect to other dependent claims have been noted. However, in view of the aforementioned arguments, the rejections of dependent claims are not specifically addressed. To the extent that characterizations of the prior art references or Applicants' claimed subject matter are not specifically addressed, it is to be understood that Applicants do not acquiesce to such characterization. Reconsideration of the present application is respectfully requested.

In view of the foregoing, Applicants respectfully submit that all pending claims are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4089 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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AGENT FOR APPLICANTS

IN THE DRAWINGS

No objection to the drawings was indicated by the Examiner. As such, Applicants assume the drawings to be acceptable.